

**OPINION  
60-206**

December 27, 1960 (OPINION)

SCHOOL DISTRICTS

RE: Residence - Tuition

This is in reply to your letter of December 2, 1960, concerning a tuition problem confronting the school board.

You state the facts as follows:

About a year and a half ago Mr. and Mrs. Arthur Humann bought a house in the city of Hazelton and moved in from their farm in Gayton Township at that time. Mr. Humann goes out to his farm in season and works there and makes his living from it but lives in town the year around. The Humanns' maintain their voting residence in Gayton Township and both of them voted there on November 8, 1960. Mr. Humann is also President of the Gayton School Board.

The Humanns' own property in the Gayton School District and also in the Hazelton-Moffit School District, the greater portion of their real estate being in the Hazelton-Moffit School District.

Four of Arthur Humann's children are attending the Hazelton School - two are elementary students and two are high school students. Gayton School District is not running any schools and the other children in the District are currently coming into the Hazelton-Moffit District and the Gayton School District is paying their tuition. The Hazelton-Moffit School Board requested tuition agreements and tuition from the Gayton School Board but were refused on the Humann children. The Hazelton-Moffit School Board collected tuition for the other Gayton children in 1959-60 school year but not for the Humann children.

The problem before the Hazelton-Moffit School Board is this - Are the Humanns' residents of the Hazelton-Moffit School District or of the Gayton School District for school purposes? If they are residents of the Gayton School District would the Hazelton-Moffit School District be entitled to collect tuition for these children? If tuition is due the Hazelton-Moffit School District would the School Board, in order to force collection, be justified in refusing to accept the Humann children for the second semester of this school year starting January 21, 1961?"

We note that section 15-29082 of the 1957 Supplement of the North Dakota Revised Code of 1943, as amended by chapter 158 of the 1959 Session Laws, provides in part as follows:

The board of education of any special school district shall

admit to the schools of the district pupils other than high school pupils from other districts when it can be done without injuring or overcrowding the schools, and shall make regulations for the admission of such pupils. When a pupil is admitted from another district, credit on his tuition shall be given by the district admitting him to the extent of school taxes paid in the admitting district by the parent or guardian of the admitted pupil."

Section 15-4016 of the 1957 Supplement to the North Dakota Revised Code of 1943, as amended by section 5 of chapter 170 of the 1959 Session Laws, regulates high school tuition payments. This section provides in part as follows:

No school district shall charge or collect from any nonresident high school student, his parents or guardian, or the district of his residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident high school students. However, a high school district shall charge tuition for nonresident high school students. The whole amount of such tuition shall be paid by the district from which the pupil is admitted. . . . Districts not providing high school education which refuse to pay the tuition charges shall forfeit their rights to county equalization payment. . . ."

The residence of a person is ascertained by a determination of his intent coupled with overt acts indicating that intent. It thus is essentially a question of fact. In the situation outlined above, the family lives in Hazelton; however, they also maintain a farm in Gayton Township. Their apparent intent, as indicated by their actions, is to make Gayton Township their legal residence since they maintain their voting residence in that township and Mr. Humann is also a member of the school board of that school district. In order to be president of the school board he must be an elector of the school district and thus a legal resident of that district. However, it doesn't necessarily follow that residence for one purpose constitutes residence for all other purposes. Each instance should be construed and determined separately.

As stated above, the question of residence is one of fact to be determined from all the surrounding circumstances. From the facts as contained in your letter and quoted in full above, the intent of this family is apparently to maintain their legal residence in Gayton Township.

However, under the law as it is now stated by our Supreme Court in *Anderson v. Breitbarth*, 62 N.D. 709, 245 N.W. 483, the legal residence of the parents does not determine the residence of the children for school purposes. Thus it is the actual residence of the child for school purposes that determines whether or not tuition is to be paid. In this connection we note that the Supreme Court of North Dakota in *Anderson v. Breitbarth*, supra, at page 487 of the Northwest Reports states:

There is nothing in this construction of the law which permits any child to come into a school district merely for the purpose

of obtaining school privileges. The requirements for the payment of tuition governs such a case; and it is immaterial whether the child comes alone or the parents come with it. When the purpose is the purpose of a nonresident to obtain the school privileges, then the law providing for tuition governs."

The question of whether the children have come into a school district merely for the purpose of obtaining school privileges, thus requiring the payment of tuition, is a question of fact which must be decided from all the evidence. If it is found that the children did come into the school district merely for the purpose of obtaining school privileges then you are entitled to require the payment of tuition. The decision on this question of fact is one which must be made by the school board from all the evidence available to the board.

Since it is a question of fact to be determined from all the surrounding circumstances, it is a question on which we are unable to give a flat answer. We cannot decide issues of fact. However, we hope that with the above discussion of the law on this matter that you will be able to apply it to the facts as determined by your school board.

LESLIE R. BURGUM

Attorney General